

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to special education

The State Board of Education hereby amends Chapter 41, “Special Education,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, the Every Student Succeeds Act, Pub.L. No. 114-95, and federal regulations published at 82 Federal Register 29755 (June 30, 2017).

Purpose and Summary

These two amendments are required based on amendments to the Individuals with Disabilities Education Act (IDEA) that were made by the Every Student Succeeds Act (ESSA). On June 30, 2017, the United States Department of Education issued final regulations that incorporated the changes that the ESSA made to the IDEA.

The State Board has adopted these amendments separately from other rule making because these amendments, although required by the ESSA, represent a practice change for many Iowa educators.

Item 1 amends the definition of “regular high school diploma.” This amendment makes clear that a regular high school diploma must be fully aligned to state-required standards. In Iowa’s case, these would be the graduation requirements set forth in Iowa Code section 256.7(26).

Item 2 explains the requirement that all students with disabilities participate in statewide and districtwide assessments, including providing children with significant intellectual disabilities with alternate assessments aligned to alternate academic achievement standards.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as **ARC 3614C**. No member of the public appeared at the public hearing held on March 27, 2018. Nineteen written public comments were received and considered. Commenters were parents of children with disabilities, area education agency personnel, school district personnel, and higher education personnel. Many commenters filled more than one of these roles. All comments related to the amendment to paragraph 41.102(1)“c” in Item 1 of the rule making.

The majority (ten) of public comments were, in essence, implementation questions about what the commenters understood was a mandatory rule. The comments requested guidance, tool kits and decision-making guides, and specific guidance on scaling and implementation. The Department, in conjunction with area education agencies, school districts, and other partners, will develop this guidance. The guidance will provide maximum flexibility to school districts and individualized education program (IEP) teams to make meaningful graduation decisions for children with disabilities. The guidance will recognize that the Iowa Code requires completion of a certain number of years in the four specified content areas, not particular courses or course descriptions or course codes. The guidance will also recognize that graduation policies and graduation decisions are made by local school boards and by IEP teams, who have wide latitude so long as they meet the mandatory minimum requirements of the Iowa Code. The Department will also provide monitoring of the amendment in a staged manner so that children with disabilities and their families are not caught off guard as they plan for life after high school.

Seven comments appeared to be largely against the proposed amendment. Some of these comments stated that children with disabilities are entitled to a high school diploma and that the rule is discriminatory. Other comments stated or implied that work toward meeting the requirements in Iowa Code section 256.7(26)“a” is either not meaningful or too difficult for some children with disabilities. The Department disagrees. First, federal special education law contemplates the possibility that not all children with disabilities graduate with a regular high school diploma. Second, evidence and experience teach that all children, including children with the most significant disabilities, benefit from challenging and meaningful instruction in how they relate to the world around them (“science”) and how they relate to the people around them (“social studies”). Not only is “exempting” children with disabilities from the requirements of Iowa Code section 256.7(26)“a” not legally permitted, it is not wise educational policy or instructional practice.

Two comments appeared to be largely favorable to the amendment. One commenter, who is a parent of a child with a disability and who is also a school district leader, stated that the rule “will raise the bar of excellence for all of our students.”

After considering the comments in light of the required language contained in the Every Student Succeeds Act, the Department and State Board made no changes to the rule making.

Adoption of Rule Making

This rule making was adopted by the State Board on March 29, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on May 30, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **41.102(1)“c”** as follows:

c. Graduates with a regular high school diploma.

(1) General. Children with disabilities who have graduated from high school with a regular high school diploma.

(2) Inapplicability of exception. The exception in 41.102(1)“c”(1) does not apply to children who have graduated from high school, but have not been awarded a regular high school diploma.

(3) Graduation is a change in placement. Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with rule 281—41.503(256B,34CFR300).

(4) Rule of construction. As used in 41.102(1) “c”(1) to (3), the term “regular high school diploma” ~~does not include an alternative degree that is not fully aligned with the state’s academic standards, such as a certificate or a general educational development credential (GED)~~ means the standard high school diploma awarded to the preponderance of students in the state that is fully aligned with state standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in Section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

ITEM 2. Adopt the following new rule 281—41.160(256B,34CFR300):

281—41.160(256B,34CFR300) Participation in assessments.

41.160(1) General. The state must ensure that all children with disabilities are included in all general state and districtwide assessment programs, including assessments described under Section 1111 of the ESEA, 20 U.S.C. Section 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

41.160(2) Accommodation guidelines.

a. The state (or, in the case of a districtwide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.

b. The state’s (or, in the case of a districtwide assessment, the LEA’s) guidelines must:

- (1) Identify only those accommodations for each assessment that do not invalidate the score; and
- (2) Instruct IEP teams to select, for each assessment, only those accommodations that do not invalidate the score.

41.160(3) Alternate assessments.

a. The state (or, in the case of a districtwide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in subrule 41.160(1).

b. For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph 41.160(3) “a” must provide for alternate assessments that:

(1) Are aligned with the state’s challenging academic content standards and challenging student academic achievement standards;

(2) If the state has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards; and

(3) Except as provided in subparagraph 41.160(3) “b”(2), a state’s alternate assessments, if any, must measure the achievement of children with disabilities against the state’s grade-level academic achievement standards, consistent with 34 CFR 200.6(a)(2)(ii)(A).

c. Consistent with 34 CFR 200.1(e), a state may not adopt modified academic achievement standards for any students with disabilities under Section 602(3) of the Act.

41.160(4) Explanation to IEP teams. The state (or, in the case of a districtwide assessment, an LEA) must provide IEP teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of state or local policies on the student’s education resulting from taking an alternate assessment based on alternate academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

41.160(5) Inform parents. The state (or, in the case of a districtwide assessment, an LEA) must ensure that parents of students selected to be assessed based on alternate academic achievement standards

are informed that their child's achievement will be measured based on alternate academic achievement standards.

41.160(6) Reports. The state (or, in the case of a districtwide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

a. The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

b. The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards.

c. The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards in school years prior to 2015-2016.

d. The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.

e. Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards (prior to 2015-2016), and alternate assessments based on alternate academic achievement standards if:

(1) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(2) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

41.160(7) Universal design. The state (or, in the case of a districtwide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this rule.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/25/18.